

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEITH WIGGINS,

Petitioner,

-v.-

9:06-CV-1436
(NAM)(DRH)

DAVID M. UNGER, Superintendent,
Orleans Correctional Facility,

Respondent.

APPEARANCES:

KEITH WIGGINS

Petitioner, *Pro Se*

02-R-3996

Orleans Correctional Facility

35-31 Gaines Basin Road

Albion, NY 14411

NORMAN A. MORDUE, Chief U.S. District Judge

ORDER

Presently before the Court is a motion for a certificate of appealability filed by petitioner Keith Wiggins.

This action was filed on November 29, 2006. Petitioner was directed to file a statement with additional information so that the Court could determine whether the petition was timely filed. Wiggins filed the statement and, upon consideration thereof, this Court determined that this proceeding was not timely filed under the one year statute of limitations of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). Dkt No. 7. Judgment dismissing the petition was entered on February 6, 2007. Dkt No. 8.

Wiggins has appealed the order and judgment of dismissal (Docket No. 10) and now seeks a Certificate of Appealability ("COA"). Dkt No. 14.

28 U.S.C. § 2253(c)(1) provides in relevant part that:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.¹

A COA may only be issued “if the applicant has made a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file relating to this action, and for the reasons set forth in the February 6, 2007 Order, the Court finds that the petitioner has failed to make such a showing herein. Therefore, the Court denies his request for a COA.

WHEREFORE, it is hereby

ORDERED, that petitioner's application for a Certificate of Appealability (Docket No. 14) is denied, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order upon petitioner by mail.

IT IS SO ORDERED.

Dated: April 19, 2007


Norman A. Mordue
Chief United States District Court Judge

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed “unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” *See* Fed.R.App.P. 22(b).